

No. 11784

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE CHRONICLE PUBLISHING COMPANY,
a Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILE
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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Answer 26

Appeal: PAGE

Certificate of the Clerk to the Transcript of
Record on..... 42

Cost Bond on..... 33

Notice of..... 33

Order Extending Time to File the Record
on Appeal and Docket the Action on.... 35

Order Enlarging the Time in Which to File
the Record on..... 41

Statement of Points Upon Which Appel-
lant Intends to Rely Upon..... 37

Stipulation as to the Record on..... 38

Appearances 32

Certificate of Clerk to Transcript of Record on
Appeal 42

Complaint for Refund of Taxes Illegally Col-
lected 2

Cost Bond on Appeal..... 33

Judgment 28

Minute Orders:

January 28, 1946—Setting Cases for Trial. 28

April 29, 1947—Engrossed Findings of
Fact and Judgments Be Filed and En-
tered in Four Cases..... 30

Motion for Leave to Enter Appearance of Additional Attorneys for Plaintiff.....	31
Consent to Entry of Order.....	31
Names and Addresses of Attorneys.....	1
Notice of Appeal to Circuit Court of Appeals Under Rule 73(b).....	33
Order Enlarging the Time in Which to File the Record on Appeal.....	41
Order Extending Time to File the Record on Appeal and Docket the Action on Appeal....	35
Order Granting Leave to Enter Appearances...	32
Order Granting Leave to Withdraw as Attorneys	37
Statement of the Points Upon Which Appellant Intends to Rely Upon Appeal.....	37
Statement of Points Upon Which Appellant Intends to Rely, and Designation of the Parts of the Record Necessary for the Consideration Thereof	44
Stipulation for Extension of the Time for Filing the Record on Appeal and Docketing the Action	35
Stipulation as to the Record on Appeal.....	38
Summons in a Civil Action.....	25
Withdrawal of Attorneys.....	36
Consent to Withdrawal.....	36

NAMES AND ADDRESSES OF ATTORNEYS

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In the United States District Court, for the
Northern District of California, Southern
Division

Civil Action No. 25231-R

THE CHRONICLE PUBLISHING COMPANY,
a corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT FOR REFUND OF TAXES
ILLEGALLY COLLECTED

Plaintiff complains of defendant and for cause
of action alleges:

I.

Plaintiff is, and at all times herein referred to
was, a corporation organized and existing under
and by virtue of the laws of the State of California,
qualified to and doing business in the Southern Divi-
sion of the Northern District of California and else-
where, and is a citizen of the United States of
America.

II.

Plaintiff is now and for many years last past and
at all times herein mentioned has been the owner
and publisher of The San Francisco Chronicle, a
daily newspaper printed, sold, circulated and dis-
tributed in the City and County of San Francisco,
State of California. [1*]

*Page numbering appearing at foot of page of original certified
Transcript.

III.

This is an action for the recovery of Social Security and Federal Insurance Contributions taxes erroneously and illegally collected under the provisions of Title VIII of the Social Security Act and the Federal Insurance Contributions Act, from plaintiff. It is brought against the United States of America.

IV.

At all times as used herein the term "News Vendor" means a person over the age of eighteen (18) years, who purchases newspapers at wholesale from the Publisher and resells the same at retail upon the public streets in the City and County of San Francisco, State of California.

V.

Heretofore, and on or about the 19th day of June, 1941, the Collector of Internal Revenue for the 1st District of California, issued and sent to plaintiff his Notice and Demand for Tax Due Under the Federal Insurance Contributions Act demanding payment within ten days from said date of the sum of \$234.00 tax, and interest in the sum of \$51.39, a total of \$285.39, alleged to be due for the period, April 1, 1937, to December 31, 1937, under the provisions of said Act on the assumed or alleged earnings of news vendors selling the San Francisco Chronicle in the City of San Francisco.

VI.

Thereafter, and on or about June 27, 1941, plaintiff paid said sum to the Collector of Internal Revenue for the First District of California, and at the same time filed its written protest and Claim for Refund of the said sum of \$285.39. A copy of said written Protest and Claim for Refund is hereunto attached marked Exhibit "1" and is by this reference made a part hereof. Plaintiff in said written Protest and Claim for Refund stated the grounds of said Protest and the basis of the said Claim for Refund. [2]

VII.

Thereafter the Commissioner of Internal Revenue disallowed and rejected the said Claim for Refund and pursuant to the provisions of Section 3772 (a) (2) of the Internal Revenue Code the Commissioner of Internal Revenue, by registered letter bearing date July 13, 1945, advised plaintiff that said Claim for Refund was disallowed. A copy of the said letter is hereunto attached marked Exhibit "2" and is by this reference made a part hereof.

VIII.

That the San Francisco Chronicle, a daily newspaper, for many years last past and at all times herein mentioned has been sold at retail on the public streets of the City and County of San Francisco, State of California, by news vendors. Said news vendors purchase copies of The San Francisco Chronicle at wholesale and thereafter sell said news-

papers to buyers thereof at the retail price of five cents per copy for each copy of the daily issue of said newspaper and at the established retail sale price for the Sunday issue of said newspaper.

IX.

At all times herein mentioned the profit to the news vendors has been and now is the difference between the wholesale price per 100 copies and the retail sales price per copy charged by said news vendors to the purchasers thereof.

X.

In the year 1937 the news vendors joined together in an organization and represented to the plaintiff and other publishers of newspapers in the City of San Francisco, State of California, that as an organization they desired to enter into a contract providing, among other things, for the purchase and sale of newspapers in said City.

Therafter after negotiations between plaintiff and said organization, said parties agreed upon the conditions to be incorporated in a contract providing, among other things, for the purchase and sale of newspapers in said City. Said contract was reduced to writing and on or about August 31, 1937, was signed by plaintiff and the said organization of news vendors. A copy of said contract is hereunto attached marked Exhibit "3" and is by this reference made a part hereof.

XI.

During all of the period of the negotiation of the said contract, Exhibit "3", and at the time of the execution thereof, it was the intent and purpose of the organization of news vendors and of plaintiff to create and maintain as between the news vendors and plaintiff the relationship of buyer and seller and to establish and maintain the news vendors as independent contractors.

XII.

Subsequent to the execution of the said contract, Exhibit "3", and throughout the term thereof, the said news vendors and plaintiff construed and interpreted said contract as establishing as between said parties the relationship of buyer and seller and construed and interpreted the status of the news vendors under the provisions of said contract as that of independent contractor and not otherwise. Said parties throughout all of the term of said contract acted with the intent and in the belief that said contract would be interpreted and construed as intended by said parties. [4]

XIII.

Thereafter on January 24, 1939 and May 28, 1940 and August 31, 1942 and August 28, 1944 said parties entered into new contracts. Each of said contracts provide, among other things, for the purchase at wholesale and the sale at retail by said news vendors of newspapers on the streets of the

City and County of San Francisco, State of California, and are similar in text, with some modifications, to the contract of August 31, 1937, Exhibit "3", but the terms of none of which subsequent contracts, modified or purport to modify, in any respect the independent relationship of the parties thereto.

XIV.

During all of the period of negotiation of each of the said four contracts subsequent to Exhibit "3" and at the time of the execution of each thereof it was the intent and purpose of the organization of news vendors and of plaintiff to maintain the relationship of buyer and seller and to maintain the status of said news vendors as independent contractors. Said parties during the term of each of said contracts have acted with the intent and in the belief that the said contracts would be interpreted and construed as intended by said parties.

XV.

That none of the news vendors selling the San Francisco Chronicle, a daily newspaper, on the streets of the City and County of San Francisco, State of California, are now and none thereof have at any time been employees of plaintiff. Said news vendors are now and always have been independent contractors purchasing from plaintiff newspapers at a wholesale price per 100 copies and thereafter selling said newspapers at retail to the public at a retail price. The plaintiff neither has nor exercises

nor claims to have or exercise any control or any right to control over the means and methods of said news vendors or any of them in the retail sale of said newspaper to the public on the public streets of the City and County of San Francisco, State of California, and said news vendors are responsible to plaintiff for the results accomplished in the retail sale of said newspaper to the public and on the public streets in said City only. [5]

XVI.

That there is no liability of plaintiff under the Federal Insurance Contributions Act for the sum of \$234.00 tax, and interest in the sum of \$51.39, a total of \$285.39, or any other sum, upon the assumed or alleged earnings of news vendors selling the San Francisco Chronicle in the City and County of San Francisco, State of California, for and during the period, April 1, 1937, to December 31, 1937.

XVII.

No part of the sum of \$285.39 claimed by plaintiff as a refund as alleged in Paragraph VI hereof has been repaid, nor has the same been credited upon the admitted liability for Federal Insurance Contributions Tax of plaintiff and the whole thereof, together with interest thereon as allowed by law, is wholly due and owing from defendant to plaintiff and unpaid.

Wherefore, plaintiff demands judgment against defendant for the sum of \$285.39, interest and costs.

Count II

I.

Plaintiff realleges as though set out herein in full all of the allegations of Paragraphs I, II, III, IV, VII, VIII, IX, X, XI, XII, XIII, XIV and XV of Count I of this complaint.

II.

Heretofore, and on or about the 27th day of January, 1943, the Collector of Internal Revenue for the First District of California, issued and sent to plaintiff his Notice and Demand for Tax Due Under the Federal Insurance Contributions Act demanding payment within ten (10) days from said date of the sum of \$78.00 tax, and interest in the sum of \$18.57, a total of \$96.57, alleged to be due for the period, October 1, 1938, to December 31, 1938, under the provisions of said Act on the assumed or alleged earnings of News Vendors selling the San Francisco Chronicle in the City of San Francisco.

III.

Thereafter, and on or about the 5th day of February, 1943, plaintiff paid said sum to the Collector of Internal Revenue for the First District of California and at the same time filed its written Protest and Claim for Refund of the said sum of \$96.57. A copy of said written Protest and Claim for Refund is hereunto attached marked Exhibit "4" and is by this reference made a part hereof. Plaintiff in said

written Protest and Claim for Refund stated the grounds of said Protest and the basis of the said Claim for Refund.

IV.

That there is no liability of Plaintiff under the Federal Insurance Contributions Act for the sum of \$78.00 tax, and interest in the sum of \$18.57, a total of \$96.57, or any other sum upon the assumed or alleged earnings of news vendors selling the San Francisco Chronicle in the City and County of San Francisco, State of California, for and during the period, October 1, 1938 to December 31, 1938.

V.

No part of the sum of \$96.57 claimed by Plaintiff as a refund as alleged in Paragraph III hereof has been repaid, nor has the same been credited upon the admitted liability for Federal Insurance Contributions Tax of Plaintiff and the whole thereof, together with interest thereon as allowed by law is wholly due and owing from Defendant to Plaintiff and unpaid.

Wherefore. Plaintiff demands judgment against defendant for the sum of \$96.57, interest and costs.

Count III

I.

Plaintiff realleges as though set out herein in full all of the allegations of Paragraphs I, II, III, IV, VII, VIII, IX, X, XI, XII, XIII, XIV and XV of Count I of this Complaint. [7]

II.

Heretofore, and on or about the 5th day of May, 1943, the Collector of Internal Revenue for the First District of California, issued and sent to plaintiff his Notice and Demand for Tax Due Under the Federal Insurance Contributions Act demanding payment within ten (10) days from said date of the sum of \$78.00 tax, and interest in the sum of \$18.69, a total of \$96.69, alleged to be due for the period, January 1, 1939 to March 31, 1939, under the provisions of said Act on the assumed or alleged earnings of News Vendors selling the San Francisco Chronicle in the City of San Francisco.

III.

Thereafter, and on or about the 14th day of May, 1943, plaintiff paid said sum to the Collector of Internal Revenue for the First District of California and at the same time filed its written Protest and Claim for Refund of the said sum of \$96.69. A copy of said written Protest and Claim for Refund is hereunto attached marked Exhibit "5" and is by this reference made a part hereof. Plaintiff in said written Protest and Claim for Refund stated the grounds of said Protest and the basis of the said Claim for Refund.

IV.

That there is no liability of plaintiff under the Federal Insurance Contributions Act for the sum of \$78.00 tax, and interest in the sum of \$18.69, a

total of \$96.69, or any other sum, upon the assumed or alleged earnings of news vendors selling the San Francisco Chronicle in the City and County of San Francisco, State of California, for and during the period, January 1, 1939, to March 31, 1939.

V.

No part of the sum of \$96.69 claimed by plaintiff as a refund as alleged in paragraph III hereof has been repaid, nor has the same been credited upon the admitted liability for Federal Insurance Contributions Tax of plaintiff and the whole thereof, together with interest thereon as allowed by law is wholly due and owing from defendant to plaintiff and unpaid.

Wherefore, plaintiff demands judgment against defendant for the sum of \$96.69, interest and costs.

Count IV.

I.

Plaintiff realleges as though set out herein in full all of the allegations of Paragraphs I, II, III, IV, VII, VIII, IX, X, XI, XII, XIII, XIV and XV of Count I of this Complaint.

II.

Heretofore, and on or about the 26th day of July, 1943, the Collector of Internal Revenue for the First District of California, issued and sent to Plaintiff his Notice and Demand for Tax Due Under the

Federal Insurance Contributions Act demanding payment within ten (10) days from said date of the sum of \$78.00 tax, and interest in the sum of \$18.60, a total of \$96.60, alleged to be due for the period, April 1, 1939 to June 30, 1939, under the provisions of said Act on the assumed or alleged earnings of News Vendors selling the San Francisco Chronicle in the City of San Francisco.

III.

Thereafter, and on or about the 7th day of August, 1943, plaintiff paid said sum to the Collector of Internal Revenue for the First District of California and at the same time filed its written Protest and Claim for Refund of the said sum of \$96.60. A copy of said written Protest and Claim for Refund is hereunto attached marked Exhibit "6" and is by this reference made a part hereof. Plaintiff in said written Protest and Claim for Refund stated the grounds of said Protest and the basis of the said Claim for Refund.

IV.

That there is no liability of plaintiff under the Federal Insurance contributions Act for the sum of \$78.00 tax, and interest in the sum of \$18.60, a total of \$96.60, or any other sum, upon the assumed or alleged earnings of news vendors selling the San Francisco Chronicle in the City and County of San Francisco, State of California, for and during the period, April 1, 1939, to June 30, 1939. [9]

V.

No part of the sum of \$96.60 claimed by plaintiff as a refund as alleged in Paragraph III hereof has been repaid, nor has the same been credited upon the admitted liability for Federal Insurance Contributions Tax of plaintiff and the whole thereof, together with interest thereon as allowed by law is wholly due and owing from defendant to plaintiff and unpaid.

Wherefore, plaintiff demands judgment against defendant for the sum of \$96.60, interest and costs.

Count V

I.

Plaintiff realleges as though set out herein in full all of the allegations of Paragraphs I, II, III, IV, VII, VIII, IX, X, XI, XII, XIII, XIV, and XV of Count I of this Complaint.

II.

Heretofore, and on or about November 3, 1943, the Collector of Internal Revenue for the First District of California, issued and sent to plaintiff his Notice and Demand for Tax Due Under the Federal Insurance Contributions Act demanding payment within ten (10) days from said date of the sum of \$78.00 tax, and interest in the sum of \$18.65, a total of \$96.65, alleged to be due for the period, July 1, 1939 to September 30, 1939, under the provisions of said Act on the assumed or alleged earnings of News Vendors selling the San Francisco Chronicle in the City of San Francisco.

III.

Thereafter, and on or about the 13th day of November, 1943, plaintiff paid said sum to the Collector of Internal Revenue for the First District of California and at the same time filed its written Protest and Claim for Refund of the said sum of \$96.65. A copy of said written Protest and Claim for Refund is hereunto attached marked Exhibit "7" and is by this reference made a part hereof. Plaintiff in said written Protest and Claim for Refund stated the grounds of said Protest and the basis of the said Claim for Refund.

IV.

That there is no liability of plaintiff under the Federal Insurance Contributions Act for the sum of \$78.00 tax, and interest in the sum of \$18.65, a total of \$96.65, or any other sum, upon the assumed or alleged earnings of news vendors selling the San Francisco Chronicle in the City and County of San Francisco, State of California, for and during the period, July 1, 1939 to September 30, 1939. [10]

V.

No part of the sum of \$96.65 claimed by plaintiff as a refund as alleged in Paragraph III hereof has been repaid, nor has the same been credited upon the admitted liability for Federal Insurance Contributions Tax of plaintiff and the whole thereof, together with interest thereon as allowed by law is wholly due and owing from defendant to plaintiff and unpaid.

Wherefore, plaintiff demands judgment against defendant for the sum of \$96.65, interest and costs.

Count VI.

I.

Plaintiff realleges as though set out herein in full all of the allegations of Paragraphs I, II, III, IV, VII, VIII, IX, X, XI, XII, XIII, XIV and XV of Count I of this Complaint.

II.

Heretofore, and on or about February 8, 1944, the Collector of Internal Revenue for the First District of California, issued and sent to plaintiff his Notice and Demand for Tax Due Under the Federal Insurance Contributions Act demanding payment within ten (10) days from said date of the sum of \$78.00 tax, and interest in the sum of \$18.70, a total of \$96.70, alleged to be due for the period, October 1, 1939, to December 31, 1939, under the provisions of said Act on the assumed or alleged earnings of News Vendors selling the San Francisco Chronicle in the City of San Francisco. [11]

III.

Thereafter, and on or about the 18th day of February, 1944, plaintiff paid said sum to the Collector of Internal Revenue for the First District of California and at the same time filed its written Protest and Claim for Refund of the said sum of \$96.70. A copy of said written Protest and Claim for Refund

is hereunto attached marked Exhibit "8" and is by this reference made a part hereof. Plaintiff in said written Protest and Claim for Refund stated the grounds of said Protest and the basis of the said Claim for Refund.

IV.

That there is no liability of plaintiff under the Federal Insurance Contributions Act for the sum of \$78.00 tax, and interest in the sum of \$18.70, a total of \$96.70, or any other sum, upon the assumed or alleged earnings of news vendors selling the San Francisco Chronicle in the City and County of San Francisco, State of California, for and during the period, October 1, 1939, to December 31, 1939.

V.

No part of the sum of \$96.70 claimed by plaintiff as a refund as alleged in Paragraph III hereof has been repaid, nor has the same been credited upon the admitted liability for Federal Insurance Contributions Tax of plaintiff and the whole thereof, together with interest thereon as allowed by law is wholly due and owing from defendant to plaintiff and unpaid.

Wherefore, plaintiff demands judgment against defendant for the sum of \$96.70, interest and costs.

Count VII.

I.

Plaintiff realleges as though set out herein in full all of the allegations of Paragraphs I, II, III,

IV, VII, VIII, IX, X, XI, XII, XIII, XIV and XV of Count I of this Complaint.

II.

Heretofore, and on or about May 4, 1944, the Collector of Internal Revenue for the First District of California, issued and sent to plaintiff his Notice and Demand for Tax Due Under the Federal Insurance Contributions Act demanding payment within ten (10) days from said date of the sum of \$78.00 tax, and interest in the sum of \$18.66, a total of \$96.66, alleged to be due for the period, January 1, 1940, to March 31, 1940, under the provisions of said Act on the assumed or alleged earnings of News Vendors selling the San Francisco Chronicle in the City of San Francisco.

III.

Thereafter, and on or about the 13th day of May, 1944, plaintiff paid said sum to the Collector of Internal Revenue for the First District of California and at the same time led its written Protest and Claim for Refund of the said sum of \$96.66. A copy of said written Protest and Claim for Refund is hereunto attached marked Exhibit "9" and is by this reference made a part hereof. Plaintiff in said written Protest and Claim for Refund stated the grounds of said Protest and the basis of the said Claim for Refund.

IV.

That there is no liability of plaintiff under the Federal Insurance Contributions Act for the sum

of \$78.00 tax, and interest in the sum of \$18.66, a total of \$96.66, or any other sum, upon the assumed or alleged earnings of news vendors selling the San Francisco Chronicle in the City and County of San Francisco, State of California, for and during the period, January 1, 1940, to March 31, 1940.

V.

No part of the sum of \$96.66 claimed by plaintiff as a refund as alleged in Paragraph III hereof has been repaid, nor has the same been credited upon the admitted liability for Federal Insurance Contributions Tax of plaintiff and the whole thereof, together with interest thereon as allowed by law is wholly due and owing from defendant to plaintiff and unpaid. [13]

Wherefore, plaintiff demands judgment against defendant for the sum of \$96.66, interest and costs.

Count VIII.

I.

Plaintiff realleges as though set out herein in full all of the allegations of Paragraph I, II, III, IV, VII, VIII, IX, X, XI, XII, XIII, XIV and XV of Count I of this Complaint.

II.

Heretofore, and on or about August 4, 1944, the Collector of Internal Revenue for the First District of California, issued and sent to plaintiff his Notice and Demand for Tax Due Under the Federal In-

surance Contributions Act demanding payment within ten (10) days from said date of the sum of \$78.00 tax, and interest in the sum of \$18.66, a total of \$96.66, alleged to be due for the period, April 1, 1940, to June 30, 1940, under the provisions of said Act on the assumed or alleged earnings of News Vendors selling the San Francisco Chronicle in the City of San Francisco.

III.

Thereafter, and on or about the 14th day of August, 1944, plaintiff paid said sum to the Collector of Internal Revenue for the First District of California and at the same time filed its written Protest and Claim for Refund of the said sum of \$96.66. A copy of said written Protest and Claim for Refund is hereunto attached marked Exhibit "10" and is by this reference made a part hereof. Plaintiff in said written Protest and Claim for Refund stated the grounds of said Protest and the basis of the said Claim for Refund.

IV.

That there is no liability of plaintiff under the Federal Insurance Contributions Act for the sum of \$78.00 tax, and interest in the sum of \$18.66, a total of \$96.66, or any other sum, upon the assumed or alleged earnings of news vendors selling the San Francisco Chronicle in the City and County of San Francisco, State of California, for and during the period, April 1, 1940, to June 30, 1940.

V.

No part of the sum of \$96.66 claimed by plaintiff as a refund as alleged in Paragraph III hereof has been repaid, nor has the same been credited upon the admitted liability for Federal Insurance Contributions Tax of plaintiff and the whole thereof, together with interest thereon as allowed by law is wholly due and owing from defendants to plaintiff and unpaid.

Wherefore, plaintiff demands judgment against defendant for the sum of \$96.66, interest and costs.

Count IX.

I.

Plaintiff realleges as though set out herein in full all of the allegations of Paragraph I, II, III, IV, VII, VIII, IX, X, XI, XII, XIII, XIV and XV of Count I of this Complaint.

II.

Heretofore, and on or about January 26, 1945, the Collector of Internal Revenue for the First District of California, issued and sent to plaintiff his Notice and Demand for Tax Due Under the Federal Insurance Contributions Act demanding payment within ten (10) days from said date of the sum of \$89.94 tax, and interest in the sum of \$21.40, a total of \$111.34, alleged to be due for the period, October 1, 1940, to December 31, 1940, under the provisions of said Act on the assumed or alleged earnings of News Vendors selling the San Francisco Chronicle in the City of San Francisco.

III.

Thereafter, and on or about the 3rd day of February, 1945, plaintiff paid said sum to the Collector of Internal Revenue for the First District of California and at the same time filed its written Protest and Claim for Refund of the said sum of \$111.34. A copy of said written Protest and Claim for Refund is hereunto attached marked Exhibit "11" and is by this reference made a part hereof. Plaintiff in said written Protest and Claim for Refund stated the grounds of said Protest and the basis of the said Claim for Refund. [15]

IV.

That there is no liability of plaintiff under the Federal Insurance Contributions Act for the sum of \$89.94 tax, and interest in the sum of \$21.40, a total of \$111.34, or any other sum, upon the assumed or alleged earnings of news vendors selling the San Francisco Chronicle in the City and County of San Francisco, State of California, for and during the period, October 1, 1940, to December 31, 1940.

V.

No part of the sum of \$111.34 claimed by plaintiff as a refund as alleged in Paragraph III hereof has been repaid, nor has the same been credited upon the admitted liability for Federal Insurance Contributions Tax of plaintiff and the whole thereof, together with interest thereon as allowed by law is wholly due and owing from defendant to plaintiff and unpaid.

Wherefore, plaintiff demands judgment against defendant for the sum of \$111.34, interest and costs.

That by reason of the premises, plaintiff is entitled to judgment against defendant for the aggregate sum of \$1,073.26, together with interest as prayed in each cause of action hereinabove pleaded, as provided by law; for costs of suit, and for such other relief as to the Court may seem meet and just.

Dated: San Francisco, California, October 11, 1945.

FINK & KEYSTON,
By GROVE J. FINK,
Attorneys for Plaintiff.

State of California,
City and County of San Francisco—ss.

E. L. Labadie, being first duly sworn, deposes and says:

That he is Secretary-Treasurer of the Chronicle Publishing Company, the plaintiff named herein; that he has read the above and foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge, except those matters stated on information and belief, and as to those matters he believes them to be true.

E. L. LABADIE

Subscribed and sworn to before me this 11th day of October, 1945.

[Seal] KATHARINE T. McDONNELL,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Oct. 11, 1945.

Note

The exhibits attached to the complaint are identical with exhibits offered in evidence. The following table shows the exhibit number in the complaint and the corresponding exhibit number of the same document as introduced in evidence.

Exhibit Number In Complaint	Plaintiff's Exhibit Number in Evidence
1	25
2	26
3	4
4	27
5	28
6	29
7	30
8	31
9	32
10	33
11	34

District Court of the United States for the Northern
District of California, Southern Division

Civil Action File No. 25231-R

THE CHRONICLE PUBLISHING COMPANY,
a corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant,

SUMMONS IN A CIVIL ACTION

To the above named Defendant:

You are hereby summoned and required to serve upon Messrs. Fink & Keyston, plaintiff's attorneys, whose address is: 1018 Hearst Building, San Francisco, Calif. an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal of Court] C. W. CALBREATH,
Clerk of Court.

By WM. J. CROSBY,
Deputy Clerk.

Date: Oct. 11, 1945.

(Return on Service of Writ.) [19]

[Endorsed]: Received Oct. 16, 1945, U. S. Marshal's Office, San Francisco, Calif., Civil 26749, Filed Oct. 18, 1945.

[Title of District Court and Cause.]

ANSWER

For answer to the complaint filed herein, defendant states as follows:

1. Defendant admits the allegations of paragraphs I, II, VI and VII of Count I and paragraph III in each of Counts II, III, and V to IX, inclusive, of the complaint.

2. Defendant denies the allegations of paragraphs XV, XVI, and XVII of Count I and paragraphs IV and V in each of Counts II to IX, inclusive, of the complaint.

3. Defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs IV, IX, XI, XII, XIII and XIV of Count I of the complaint and therefore denies every allegation therein.

4. Answering paragraph V of Count I and paragraph II in each of Counts II to IX, inclusive, of the complaint, defendant admits the allegations thereof, except that defendant denies that the tax therein referred to was based on the assumed or alleged earnings of news vendors selling the San Francisco Chronicle in the City of San Francisco, and alleges that said tax was measured by the remuneration received by said vendors as employees of the plaintiff in the sale of said newspaper.

5. Answering paragraph VIII of Count I of the complaint, [20] defendant admits the allegations of the first sentence thereof and denies the allegations of the second sentence thereof.

6. Answering paragraph X of Count I of the complaint, defendant admits that Exhibit "3" to the complaint is a true copy of a document executed by the persons whose signatures are subscribed thereto, but denies every other allegation therein.

7. Answering paragraph I in each of Counts II to IX, inclusive, of the complaint, defendant incorporates by reference its answer to the paragraphs of the complaint therein referred to.

8. Answering paragraph III of Count IV of the complaint, defendant admits the allegations thereof, except with respect to the date of August 7, 1943, which is denied and is alleged to be August 9, 1943.

Wherefore, defendant prays that judgment be entered against plaintiff for costs and all other proper relief.

/s/ FRANK J. HENNESSY,
United States Attorney,
Attorney for Defendant.

[Endorsed]: Filed Jan. 15, 1946. [21]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 28th day of January, in the year of our Lord one thousand nine hundred and forty-six. Present: The Honorable Louis E. Goodman,
District Judge.

Nos. 25230-G, 25231-G

THE CHRONICLE PUBLISHING CO.,

vs.

UNITED STATES OF AMERICA.

Minute Order of January 28, 1946

ORDER SETTING CASES FOR TRIAL

The two above-entitled cases came on regularly this day for hearing of motion to set for trial in each case. After hearing G. D. Keyston, Esq., attorney for plaintiff, and E. Bonsall, Esq., Assistant U. S. Attorney, it is ordered that trial of these cases be set for March 28, 1946 (Court). [22]

In the Southern Division of the United States District Court for the Northern District of California

No. 25231

THE CHRONICLE PUBLISHING COMPANY,
a Corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

This cause coming on for trial, both parties appearing by counsel, and having been submitted to the

court for trial without a jury and the court now here after hearing all the evidence adduced and being fully advised in the premises, and having made its findings of fact and conclusions of law, finds the issues for the defendant.

Therefore, it is hereby ordered, adjudged and decreed that the plaintiff take nothing; that the action be and it is hereby dismissed on the merits; that the defendant have and recover from the plaintiff its costs in the action, and that the defendant have execution therefor.

LOUIS E. GOODMAN,

District Judge.

Entered April 28th, 1947.

[Endorsed]: Lodged, 2/17/47. Filed and entered April 29, 1947. [23]

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 29th day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Louis E. Goodman,
District Judge.

Civ. No. 25230-G

THE CHRONICLE PUBLISHING CO., Etc., vs.
UNITED STATES.

Civ. No. 25231-G

THE CHRONICLE PUBLISHING CO., Etc., vs.
UNITED STATES.

Civ. No. 25228-G

HEARST PUBLICATIONS, INC., Etc., vs.
UNITED STATES.

Civ. No. 25229-G

HEARST PUBLICATIONS, INC., Etc., vs.
UNITED STATES.

Minute Order of April 29, 1947

ORDER THAT ENGROSSED FINDINGS AND
JUDGMENTS BE FILED AND ENTERED

These cases heretofore having been tried before the Court sitting without a jury, and the Court having found in favor of the defendant upon findings of fact and conclusions of law and the defendant having submitted proposed findings and the plaintiffs having submitted proposed amendments thereto, and the Court thereafter having ordered the proposed findings submitted by the defendant engrossed, and the proposed findings thereafter having been engrossed, it is Ordered that said engrossed findings and the judgments herein be filed and entered in the form presented and signed. [24]

In the District Court of the United States for the
Northern District of California, Southern
Division

No. 25231-G

THE CHRONICLE PUBLISHING COMPANY,
a Corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

MOTION FOR LEAVE TO ENTER APPEAR-
ANCE OF ADDITIONAL ATTORNEYS
FOR PLAINTIFF

Plaintiff moves the court to enter an order per-
mitting Reginald H. Linforth and James I. John-
son to file their appearance as additional attorneys
for the plaintiff.

GROVE J. FINK,
FINK & KEYSTON,
By GROVE J. FINK,
Attorneys for Plaintiff.

Consent to Entry of Order

Consent is hereby given to the entry of the order
requested in the foregoing motion, without notice.

Dated: July 11, 1947.

/s/ FRANK J. HENNESSY,
Attorney for Defendant.

By C. ELMER COLLETT,
Asst. U. S. Attorney.

[Endorsed]: Filed July 14, 1947. [25]

[Title of District Court and Cause.]

ORDER GRANTING LEAVE TO ENTER
APPEARANCES

On motion of plaintiff, and pursuant to the consent of defendant, leave is hereby granted Reginald H. Linforth and James I. Johnson to file their respective appearances in the above-entitled action as additional attorneys for plaintiff therein.

Dated: July 14, 1947.

MICHAEL J. ROCHE,

United States District Judge.

[Endorsed]: Filed July 14, 1947. [26]

[Title of District Court and Cause.]

APPEARANCES

The undersigned, Reginald H. Linforth and James I. Johnson, in pursuance of an order of the above-entitled court, granting them leave so to do, hereby enter their respective appearances as additional attorneys for plaintiff in the above-entitled action.

Dated: July 14, 1947.

/s/ REGINALD H. LINFORTH,

910 Crocker Building,

San Francisco, California,

Sutter 4815.

/s/ JAMES I. JOHNSON,

910 Crocker Building,

San Francisco, California,

Sutter 4815.

[Endorsed]: Filed July 14, 1947. [27]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT
OF APPEALS UNDER RULE 73(b)

Notice is hereby given that The Chronicle Publishing Company, a corporation, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on April 29, 1947.

GROVE J. FINK,
FINK & KEYSTON,

By GROVE J. FINK.

REGINALD H. LINFORTH,
JAMES I. JOHNSON,

Attorneys for Appellant The Chronicle Publishing
Company.

Of Counsel.

Calkins. Hall, Linforth & Conrad

[Endorsed]: Filed July 21, 1947. [28]

[Title of District Court and Cause.]

COST BOND ON APPEAL

The Premium on This Bond Is \$10 Per Annum.

Whereas, the plaintiff in the above-entitled action is about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from a judgment entered against it in said action in the District Court of the United States, for the Northern District of California, Southern Division, in favor of the defendant in said action, on the 29th day of April, 1947.

Now, Therefore, in consideration of the premises and of such appeal, the undersigned, Maryland Casualty Company, a corporation duly organized and existing under the laws of the State of Maryland and duly authorized to transact a general surety business in the State of California, does undertake and promise on the part of the appellant that the said appellant will pay all damages and costs which may be awarded against it on the appeal or on a [29] dismissal thereof not exceeding the sum of \$250.00, to which amount it acknowledges itself bound.

In Witness Whereof the corporate seal and name of the said surety company is hereto affixed and attested at San Francisco, California, by its duly authorized officer this 18th day of July, 1947.

In case of a breach of any condition hereof the above-entitled court may, upon notice to said Maryland Casualty Company, surety hereunder, of not less than ten days, proceed summarily in the above-entitled action or proceeding to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment against said surety and award execution therefor.

[Seal]

MARYLAND CASUALTY
COMPANY,

By /s/ H. M. VREELAND, JR.,
Attorney in Fact.

[Endorsed]: Filed July 21, 1947. [30]

[Title of District Court and Cause.]

STIPULATION FOR EXTENSION OF THE
TIME FOR FILING THE RECORD ON AP-
PEAL AND DOCKETING THE ACTION

It Is Hereby Stipulated by and between the parties hereto through their respective attorneys of record:

That an order may be entered extending the time for filing the record on appeal and docketing the action on the appeal to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on April 29, 1947, notice of which appeal has been filed by plaintiff.

Dated: August 20, 1947.

/s/ REGINALD H. LINFORTH,

/s/ JAMES I. JOHNSON,

Attorneys for Plaintiff.

/s/ FRANK J. HENNESSY,

U. S. Attorney,

Attorney for Defendant.

[Endorsed]: Filed Aug. 21, 1947. [31]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE THE
RECORD ON APPEAL AND DOCKET
THE ACTION ON APPEAL

Pursuant to the stipulation of the parties hereto, it is hereby ordered that the time for filing the record on appeal and docketing the action on the appeal to the Circuit Court of Appeals for the Ninth

Circuit from the final judgment entered in this action on April 29, 1947, notice of which appeal has been filed by plaintiff, be, and the same hereby is, extended to and including October 18, 1947.

Dated: August 21st, 1947.

LOUIS E. GOODMAN,
U. S. District Judge.

[Endorsed]: Filed Aug. 21, 1947. [32]

[Title of District Court and Cause.]

WITHDRAWAL OF ATTORNEYS

Whereas, Grove J. Fink, of the firm of Fink & Keyston, died on the 23rd day of July, 1947, said firm, with the consent of plaintiff appended hereto, hereby withdraws as attorneys for plaintiff in the above-entitled action.

Dated: August 19, 1947.

FINK & KEYSTON,
By /s/ GARTON D. KEYSTON.

Consent to Withdrawal

The Chronicle Publishing Company hereby consents to the withdrawal of Fink & Keyston as its attorneys in the above-entitled action, leaving Reginald H. Linforth and James I. Johnson as its sole attorneys in said action.

Dated: August 19, 1947.

[Seal] THE CHRONICLE
PUBLISHING COMPANY,
By /s/ L. DENNY.

[Endorsed]: Filed Aug. 21, 1947. [33]

[Title of District Court and Cause.]

ORDER GRANTING LEAVE TO WITHDRAW
AS ATTORNEYS

Pursuant to the consent of plaintiff filed herein, leave is hereby given to Messrs. Fink & Keyston to withdraw as attorneys for the plaintiff in the above-entitled action.

Dated: August 21st, 1947.

LOUIS E. GOODMAN,
U. S. District Judge.

Consent is hereby given to the granting of the foregoing order without notice.

/s/ FRANK J. HENNESSY,
U. S. Atty.,
Attorneys for Defendant.

/s/ REGINALD H. LINFORTH,
/s/ JAMES I. JOHNSON,
Attorneys for Plaintiff.

[Endorsed]: Filed Aug. 21, 1947. [34]

[Title of District Court and Cause.]

STATEMENT OF THE POINTS UPON
WHICH APPELLANT INTENDS TO
RELY UPON APPEAL

Appellant intends to rely upon each of the following points.

1. The court erred in holding that the news

vendors involved were employees of plaintiff and were not independent contractors.

2. The court erred in the findings of fact upon which its decision was based.

3. The court erred in its conclusions of law.

/s/ REGINALD H. LINFORTH,

/s/ JAMES I. JOHNSON,

Attorneys for Appellant.

Received a true copy of the foregoing this 24th day of September, 1947.

WILLIAM E. LICKING,

Asst. U. S. Atty.,

Attorney for Appellee.

[Endorsed]: Filed Sept. 24, 1947. [35]

[Title of District Court and Cause.]

STIPULATION AS TO THE RECORD ON APPEAL

It is hereby stipulated by and between the parties hereto, through their respective attorneys of record:

1. That the following are designated as the parts of the record, proceedings and evidence to be included in the record on appeal:

(a) The complaint.

(b) The summons.

(c) The answer to the complaint.

(d) Order relative to consolidation and setting case for trial on March 28, 1946, entered January 28, 1946.

(e) Motion for judgment on pleadings filed March 22, 1946.

(f) Order consolidating for trial cases Nos. 25228, 25229, 25230, and 25231, entered March 28, 1946. [36]

(g) Motion for judgment, filed April 2, 1946.

(h) A complete transcript of all the evidence and proceedings.

(i) All exhibits identified, offered or introduced in evidence, being plaintiff's exhibits Nos. 1 through 53, both inclusive, and defendant's exhibits A through Z, both inclusive, AA, AB, AC, AD, AE, AF, AG, AH, AI, AJ.

(j) Order submitting case, entered July 29, 1946.

(k) Order that judgment be for defendant upon findings to be presented, entered January 2, 1947.

(l) Opinion, filed January 2, 1947.

(m) Defendant's request for findings, filed January 28, 1947.

(n) Stipulation extending time to file objections, amendments and additions to findings, filed February 7, 1947.

(o) Plaintiff's objections and suggestions for amendments and additions to findings, filed February 18, 1947.

(p) Order settling findings of fact and conclusions of law, filed February 27, 1947.

(q) Finding, filed April 29, 1947.

(r) Judgment, filed April 29, 1947, together with order that findings and judgment be entered and filed, entered April 29, 1947.

(s) Motion relative to appearances, filed July 14, 1947.

(t) Order permitting additional appearances, filed July 14, 1947.

(u) Appearance of Reginald H. Linforth and James I. Johnson, filed July 14, 1947.

(v) Notice of Appeal, filed July 21, 1947.

(w) Cost Bond on Appeal, filed July 21, 1947.

(x) Withdrawal of Attorneys, filed August 21, 1947.

(y) Order Granting Leave to Fink & Keyston to Withdraw as Attorneys, filed August 21, 1947.

(z) Stipulation, filed August 21, 1947.

(aa) Order Extending Time to File Record on Appeal and Docket the Action, filed August 21, 1947.

(bb) Statement of Points on Which Appellant Intends to Rely Upon Appeal.

(cc) This Stipulation as to the Record on Appeal.

2. That those parts of the record, proceedings and evidence described in items 1(e)-1(q), both inclusive, are identical with those parts of the record, proceedings and evidence described in items 1(e)-1(q) of the Stipulation as to the Record on Appeal in case No. 25228 (the cases being consolidated for trial); that copies thereof need not be sent up with the record on appeal in this case, but that the copies or originals thereof included in the record on appeal in case No. 25228 shall be incorporated by reference in the record on appeal in this case.

Dated: September 18, 1947.

/s/ REGINALD H. LINFORTH,

/s/ JAMES I. JOHNSON,

Attorneys for Plaintiff.

/s/ FRANK J. HENNESSY,

U. S. Attorney.

/s/ W. E. LICKING,

Asst. U. S. Atty.,

Attorneys for Defendant.

[Endorsed]: Filed Sept. 24, 1947. [38]

In the United States Circuit Court of Appeals
for the Ninth Circuit

District Court No. 25231-G

THE CHRONICLE PUBLISHING CO., a Cor-
poration,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER ENLARGING THE TIME IN WHICH
TO FILE THE RECORD ON APPEAL

On motion of appellant, and for good cause shown,
the time in which the appellant may file the record
on appeal and docket the action on appeal in the
above-entitled case, numbered 25231-G in the Dis-
trict Court of the United States for the Northern

District of California, Southern Division, is hereby extended to and including November 18, 1947.

Dated this 16th day of October, 1947.

[Seal] WILLIAM DENMAN,
Judge of the United States Circuit Court of Ap-
peals for the Ninth Circuit.

A True Copy.

Attest: Oct. 16, 1947.

/s/ PAUL P. O'BRIEN,
Clerk.

[Endorsed]: Filed Oct. 16, 1947. Paul P.
O'Brien, Clerk.

[Endorsed]: Filed Oct. 17, 1947. C. W. Cal-
breath, Clerk. [39]

District Court of the United States, Northern
District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 39 pages, numbered from 1 to 39, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of *The Chronicle Publish-*

ing Company, a Corporation, Plaintiff, vs. United States of America, Defendant, No. 25231-G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$5.50 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 10th day of November, A.D. 1947.

[Seal]

C. W. CALBREATH,
Clerk.

/s/ M. E. VAN BUREN,
Deputy Clerk.

[Endorsed]: No. 11784. United States Circuit Court of Appeals for the Ninth Circuit. The Chronicle Publishing Company, a Corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed November 10, 1947.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11784

THE CHRONICLE PUBLISHING CO., a Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY, AND DESIGNATION OF THE PARTS OF THE RECORD NECESSARY FOR THE CONSIDERATION THEREOF

Appellant intends to rely upon each of the following points:

1. The court erred in holding that the news vendors involved were employees of appellant and were not independent contractors.
 2. The court erred in the findings of fact upon which its decision was based.
 3. The court erred in its conclusions of law.
- Appellant designates the entire record on appeal

as that which is necessary for the consideration of said points, the exhibits, however, to be considered in their original form.

CALKINS, HALL, LINFORTH
& CONARD,

By /s/ REGINALD H. LINFORTH,

/s/ JAMES I. JOHNSON,

Attorneys for Appellant.

Received a true copy of the foregoing this
day of November, 1947.

FRANK J. HENNESSY,

United States Attorney.

By /s/ W. E. LICKING,

Asst. U. S. Atty.

[Endorsed]: Filed Nov. 25, 1947.

